

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.5072 OF 2015**

**Chaudhary Abdul Majid Shahadat** : Petitioner.  
**Versus**  
**Municipal Corporation of Greater Bombay**  
**and ors.** : Respondents.

**Mr. R S Apte, Senior Advocate /aw Mr. Himanshu Kode i/by Mr. Jayesh Bhatt for the Petitioner.**  
**Mrs. Geeta Joglekar for the Respondent No.1.**  
**Mr. S D Mogre for the Respondent No.2.**

**CORAM : R. M. SAVANT, J.**  
**DATE : 12<sup>th</sup> October 2015**

**P.C.**

1           The writ jurisdiction of this Court is invoked against the order dated 13/04/2015 passed by the learned Judge of the City Civil Court, Greater Bombay by which order the Application being Chamber Summons No.189 of 2013 filed by the Respondents came to be allowed and resultantly the Respondent No.2 and its trustees were directed to be impleaded as Defendant No.1 to the suit in question.

2           The suit in question being LC Suit No.117 of 2012 has been filed by the Petitioner against the notice issued under Section 354A of the Mumbai Municipal Corporation Act to the Petitioner. It seems that in the said suit an application for injunction came to be filed by the Petitioner by way of Notice of Motion No.157 of 2012 and ad-interim relief came to be granted to the

Petitioner, pursuant to which a three storeyed building was put up on the site in question which resulted in the light and air of the school run by the Respondent No.2 Trust i.e. the Applicants in the Chamber Summons being affected. The Respondent No.2 Trust accordingly complained to the Municipal Corporation of Greater Mumbai on number of occasions. It is pursuant to the complaints made by the Respondents that the action was taken by the MCGM and the construction by way of a three storeyed building which was put up came to be demolished. It seems that the Petitioner thereafter filed Notice of Motion No.1990 of 2012 for further interim relief in the nature of directing the MCGM to re-construct the building which has been demolished or permit the Petitioner to reconstruct the building and for appointment of Commissioner etc. The said Notice of Motion came to be dismissed by a learned Judge of the City Civil Court against which an Appeal from Order No.369 of 2013 came to be filed, which Appeal from Order came to be dismissed by a learned Single Judge of this Court (Coram : S C Dharmadhikari, J) by order dated 12/06/2013.

3           In the suit in question the Respondent No.2 Trust filed an application for its impleadment which application was founded on the fact that the light and air of the building in which a school is run by the Respondent-Trust was being affected, and that it is pursuant to the application made by the Respondent-Trust that the action was taken and therefore the Respondent –

Trust was required to be impleaded as party to the suit.

4           The said application was opposed to on behalf of the Petitioner herein i.e. the original Plaintiff.

5           The Trial Court considered the said application and having regard to the fact that the Plaintiff's illegal construction has the effect of affecting the school security as well as light and ventilation and having regard to the ratio laid down by the Apex Court in the case of **Ramesh Hirachand Kundanmal V/s. Municipal Corporation of Greater Bombay and others** reported in **1992(2) SCC 524** deemed it appropriate to allow the application.

6           It is required to be noted at this stage that this Court had an occasion to deal with a similar issue in the judgment reported in 2012 (2) ALL MR 171 in the matter of **Aijaz @ Azaz Mohammed Shaikh v/s. Municipal Corporation of Greater Bombay and Anr.** This Court in the said case whilst upholding the order of the City Civil Court had thereby confirmed the impleadment of the 3<sup>rd</sup> party whose light and air was affected on account of the construction put up, but had issued a note of caution that it is not in every case that a person at whose behest or persuasion notice is issued under section 351 can be allowed to be impleaded as a party to a particular suit, and the court in such a case has to exercise its discretion in that regard.

7           In my view, in the facts and circumstances of the present case, it cannot be said that the discretion exercised by Trial Court in allowing the application filed by the Respondent Trust is erroneous or the Trial Court has exceeded its jurisdiction in allowing the application. Hence the impugned order does not call for any interference in the writ jurisdiction of this Court. The above Writ Petition is accordingly dismissed.

8           At this stage the learned Senior Counsel appearing on behalf of the Petitioner prays for stay of the instant order. In the facts and circumstances of the present case, the said prayer is rejected.

**[R.M.SAVANT, J]**